

16th Annual ACE Conference 2018

CTS Eventim exclusivity clauses

15 November 2018
Bologna



Bundeskartellamt

The views expressed are those of the
presenter and do not necessarily reflect
those of the Bundeskartellamt

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Agenda

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1. The Ticketing Business

2. Dominance

3. Foreclosure

The Ticketing Business

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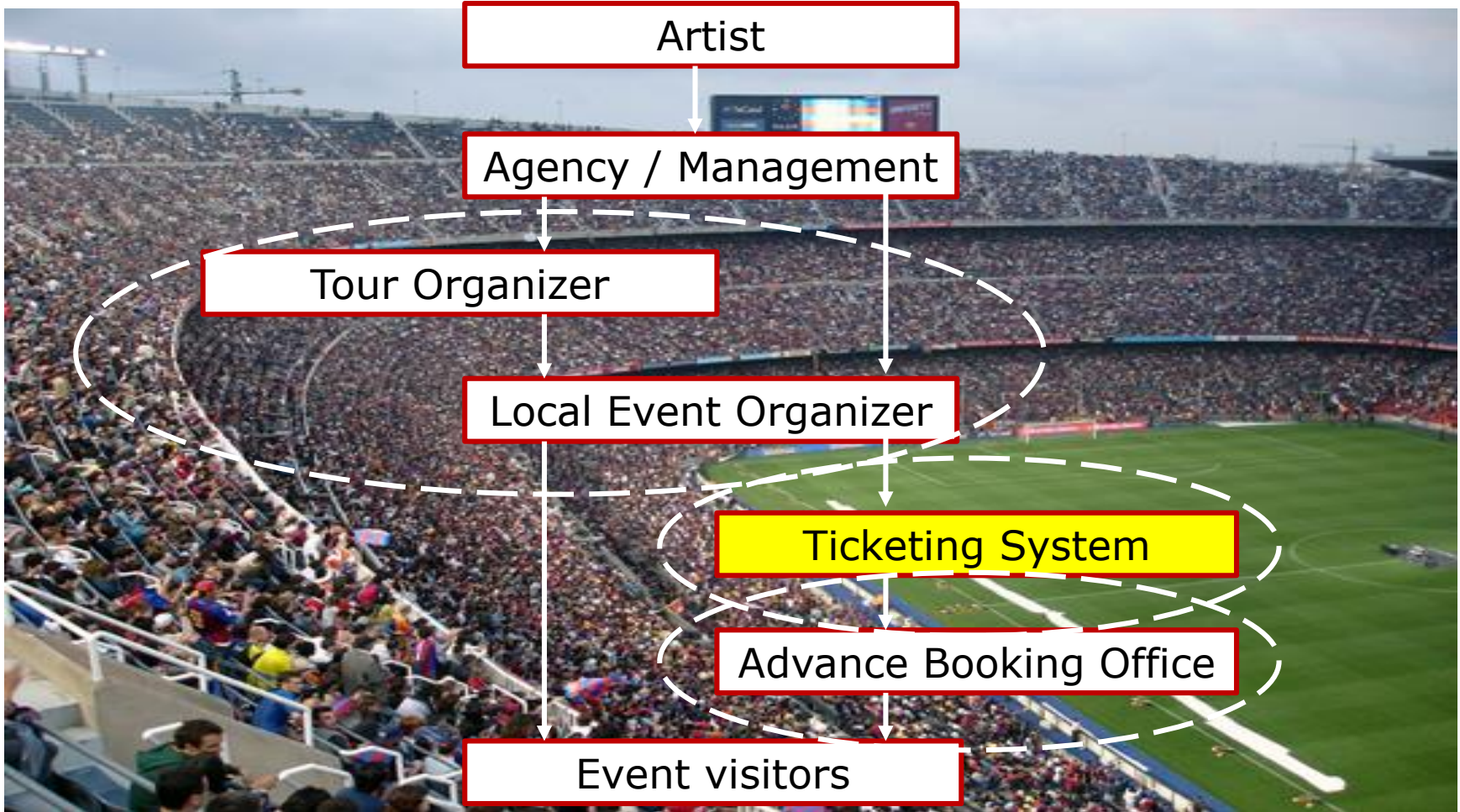
CTS Eventim's Activities

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- A **ticketing system** is an IT platform that connects event organizers ("EO") and advance booking offices ("**ABO**"):
 - => Enables EO to sell tickets via different ABO and online shops
 - => Enables ABO to book tickets for different events
- CTS = acronym for "Computer Ticket Service"
- CTS Eventim ("CTS") is the largest ticketing system in Germany
 - CTS is vertically integrated: Owns several EO and the large online ticket shop www.eventim.de
 - 2017: turnover 1034 mn EUR, EBIT 166 mn EUR
"ticketing segment" turnover 418 mn EUR, "ticketing segment" EBIT 145 mn EUR
"ticketing segment" margins : gross margin 60%, net margin 35%

CTS's Activities

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The Relevant Market

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- **Relevant product market:**

Two-sided market for ticketing system services:

- Ticketing system services for EO
- Ticketing system services for ABO

- **Relevant geographic market:** Germany (national market)

- Regional events are important, however EO and ABO need connection to supra-regional system

CTS faces only two nation-wide competitors

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Ticketing system	Share of tickets sold
CTS	60 – 70 %
Reservix	10 – 20 %
Ticketmaster	5 – 10 %
DTS (Cologne)	5 – 10 %
München Ticket	0 – 5 %
Frankfurt Ticket	0 – 5 %
Others	0 – 5 %

- Besides CTS only Reservix and Ticketmaster have a nationwide ABO-network
- regional ticketing systems maintain cooperation contracts with CTS → aggregated ticket share 65 – 85 %

Characteristics of two-sided market contribute to CTS's market power

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- Market leader benefits from positive **indirect network effects**
 - EO seek high reach to potential visitors via ABO
 - ABO need high coverage of events
 - As more EO use a ticketing system, it becomes more attractive to ABO and vice-versa
- Only few EO and ABO multi-home (occasionally)
- CTS seems to be indispensable for ABO
- Indirect network effects generate high **barriers to entry**

Some further aspects taken into account

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- **Vertical integration** of CTS protects its market position:
e.g. own online-shop 35-45 % ; own EO 10-15 % of all tickets
- Ticketing systems characterized by high proportion of **fixed costs**
- CTS has a lead over its competitors in its **access to data**
- **Innovative pressure** from new digital business models on established ticketing systems seems rather low
- CTS not sufficiently constrained by **direct online sales** of EO:
 - viable outside option for very attractive events
 - but this will not protect the "normal" EO, nor the ABO
 - CTS is able to (and does) differentiate prices

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The exclusivity agreements

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- CTS concluded a broad range of exclusivity agreements with both EO and ABO
- share of nation-wide ticket volumes bound by exclusivity agreements
 - 20-25% through contracts with EO with at least 2 years of term
 - <5% through contracts with EO on specific events
 - <5% through contracts by regional cooperation partners with EO
 - <5% through contracts with ABO with at least 2 years of term
- Exclusivity agreements concluded particularly with very attractive EO
- (modest) exclusivity discounts granted

Exclusivity agreements vs. exclusivity rebates

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- Exclusivity agreements will often contain a discount (explicit or implicit)
- Exclusivity agreements (with or without discounts) exhibit effects that are different to exclusivity rebates :
 - exclusivity rebates: after conclusion of contract, customers can switch provider anytime losing their rebates
 - exclusivity agreements: customers cannot switch during contractual period; staggering effects
- Proceedings focused on CTS's long-term exclusivity agreements - **binding period of 2 years or more**

Theory of Harm

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- Exclusivity agreements foreclose rival ticketing systems through two mechanisms:
 - “Traditional” theory of harm: Exclusivity **reduces share of the contestable market**. Competitors lacking economies of scale can not reach efficient cost levels for offering products at competitive prices.
 - Additional theory of harm, specific to platform markets:
Prevention of multi-homing: Exclusivity reduces attractiveness of rival platforms for other customers (“lowering rivals’ quality”)

CTS submitted an AEC-Test

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- No modification of standard AEC-calculus used for predatory pricing and/or loyalty rebates without indirect network effects
- Calculation submitted is based on (modest) discounts granted for exclusivity
- Assumed contestable share (for each customer) : ~50%
- Result: effective price for contestable share is higher than CTS's variable costs
- CTS held that its exclusivity agreements would thus be in accordance with competition on the merits

AEC-test does not fit to the behavior at stake

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- AEC-test designed for price-based exclusionary conduct, not for **non-price conduct**
 - BKartA did not argue that CTS's prices were predatory
- Calculation based on discounts does not reflect relevant characteristics of the exclusivity agreements at stake:
 - Customers could only switch by breaking the long-term contract (>2 years)
 - **Contractual penalties / potential damage claims** were not taken into account

Customer options uncertain, indirect network effects not reflected

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- Exclusivity agreement might have been a “**take it or leave it offer**”
 - EO/ABO could be forced to conclude the exclusivity agreement, if CTS is an unavoidable trading partner for them
- Level of (implicit) **discount is unknown**. From the stated level of discounts it is not possible to draw conclusions
 - whether customers had a non-exclusive option at all
 - and if so, what the price in an agreement without exclusivity would have been
- Due to indirect network effects, any prevention of multi-homing makes competitors’ offerings less attractive.
 - AEC-test submitted **ignores this quality effect**.

The Decision of the Bundeskartellamt

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- In December 2017, BKartA prohibited CTS from using exclusivity contracts with EO and ABO if the contractual period is two years or more. No fines.
- CTS appealed the decision, court proceedings are pending.
- Court declined interim relief:
CTS had to modify/cancel ongoing contracts

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